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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BRAULIO MERCADO OLMOS,

Defendant and Appellant.

E048544

(Super.Ct.No. SWF025662)

OPINION

APPEAL from the Superior Court of Riverside County. Ronald L. Johnson, Judge. (Retired judge of the San Diego Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Braulio Mercado Olmos appeals following his conviction of robbery (Pen. Code, § 211)¹ and criminal threats (§ 422), and his fifteen-year sentence. As discussed below, we affirm.

FACTS AND PROCEDURE

On May 10, 2008, about 3:00 p.m., defendant waited in line at the checkout counter at the Los Ponchos Market in Lake Elsinore. When the two customers ahead of him were gone, he asked the clerk for a pack of cigarettes. He then pulled out a toy handgun from his waistband and told the clerk to open the register and give him all the money, or he was going to shoot and kill her. The clerk gave defendant about \$150.00 from the register. Defendant left the store with the money and the cigarettes.

The clerk recognized defendant because he was a regular customer at the store. She picked him out of a six-pack photo lineup. The store had a video surveillance tape of the robbery. Both the manager and another employee viewed the video and identified defendant as both the robber and a regular customer. A sheriff's detective watched the surveillance tape with the store owner and recognized defendant from a photograph he had seen in connection with a prior event within the past week. The sheriff's department was unable to preserve the tape before it was automatically erased by the store's surveillance camera system.

Defendant was arrested the following day. He consented to a search of his vehicle, which revealed a realistic-looking toy gun under the driver's seat. At the police

¹ All further statutory references are to the Penal Code unless otherwise indicated.

station, the sheriff's detective read defendant his *Miranda*² rights, which defendant indicated he understood. The detective asked defendant: "Having these rights in mind, do you want to talk to me about what's going on?" Defendant responded "Well, I just want to know . . . how much time I'm getting" The detective again asked defendant if he wanted to talk about the incident at the Los Panchos Market, stating he needed a "yes or no" answer. Defendant said, ". . . I just want to do my time and I just want to get out of this state. I just want to go back to Kansas." The detective asked again, "Want to talk to me about it?" to which defendant said, "I mean what can I say you know? It just happened." The detective said, "Okay, well I'm gonna take that as a yes, unless you tell me otherwise okay?" The detective asked defendant what happened at the Los Panchos Market, and defendant described using a gun to get the clerk to give him money from the cash register.

The People charged defendant with robbery and making criminal threats, and alleged that defendant had been convicted in 1992 of robbery, which is a prior serious felony under section 667, subdivision (a), and a prior "strike" conviction under sections 667, subdivisions (c) and (e)(1) and 1170.12, subdivision (c)(1). A jury returned guilty verdicts on both counts. Defendant admitted the prior robbery conviction. On June 5, 2009, the trial court sentenced defendant to a state prison term of 15 years, consisting of the upper term of five years on the robbery charge, doubled to ten years for the prior strike, with a consecutive five years for the prior serious felony. On the criminal threats

² *Miranda v. Arizona* (1966) 384 U.S. 436.

charge, the trial court imposed, and then stayed, the low term of sixteen months. This appeal followed.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P.J.

We concur:

HOLLENHORST
J.
KING
J.